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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,841	08/08/2006	Detlef Lauk	022862-1090-00	1054
23409 7590 12/27/2010 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER				
LUONG, VINH				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,841

Applicant(s)

LAUK ET AL.

Examiner

Vinh T. Luong

Art Unit

3656

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-9 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2010 and 08 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Appendix.

1. The amendment filed on October 11, 2010 has been entered.
2. Applicant's election of the species of FIGS. 1a-2l in the reply filed on March 29 2010 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
3. Claims 7-9 and 17-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 29, 2010.
4. The drawings were received on October 11, 2010. These drawings are not accepted by the Examiner because of the reasons, e.g., listed below.

(a) The drawings are not in compliance with 37 CFR 1.84 as required by 37 CFR 1.121(d). Please see Form PTO-948 attached; and

(b) The amendments to the drawings introduce new matter.

For example, amended FIGS. 1 and 2 now show that the structural part 16 is made of metal and the eccentric bush 46 is made of synthetic resin/plastic in accordance with the conventional meaning of the hatching in the drawings in accordance with the drawing symbols for draftsperson in MPEP § 608.02. Please see 37 CFR 1.84(h) (3). However, the original application did not disclose as to what materials that the structural part 16 and the bushing 46, etc. are made of. Thus, the original disclosure implies that the part 16 and the bushing 46 can be made of a variety of different materials, such as, metal, plastic, synthetic resin, rubber, composite fibers, etc. and/or a combination thereof. The showing of a specific material (metal for the part 16 and synthetic resin/plastic for bushing 46) within a full spectrum of possible materials is

considered under the present disclosure to be new matter. See *In re Smith*, 173 USPQ 679 (CCPA 1972); *Ex parte George*, 230 U.S.P.Q. 575, 578 (BPAI 1986); *Twin Disc v. United States*, 231 USPQ 417, 436 (US Cl. Ct. 1986); MPEP §§ 608.04, 608.04(a), and 2163.06.

5. The original drawings are objected to because of the reasons set forth in the Office action on June 11, 2010.

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 4-6, 15, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “can be pressed” in claim 1 is vague and indefinite in the sense that things which may be done are not required to be done. For example, the crank can be, but is not required structurally to be pressed onto the structural part without the shaft being axially stressed. Compare “crimpable” in *In re Collier*, 158 USPQ 266 (CCPA 1968); “discardable” in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986); “removable” in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992); and “comparable” in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992) cited in MPEP 2173.05(b).

8. Claims 1, 4-6, 15, and 16, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkel (WO 01/21460) in view of Hawighorst (WO 03/039922).

As noted, WO 01/21460 and WO 03/039922 cited in the International Search Report correspond to US 6,802,102 and US 2004/0163483 respectively. In the rejection below, the Examiner uses US 6,802,102 and US 2004/0163483 as English translation of these references.

Claim 1

Merkel teaches a crankshaft, for a wind-shield wiper system, in which a shaft 14 is connected to a crank 12 so as to drive the shaft 14 wherein the crank 14 is connected to the shaft 12 via a structural part 44 having first and second fore parts (see Appendix hereinafter “Appendix”), wherein the first fore part (App.) projects into a bore hole (App.) of the crank 12 such that the crank 12 can be pressed onto the structural part 44 without the shaft 14 being axially stressed.

Merkel teaches the invention substantially as claimed. However, Merkel does not teach the crosspiece on the second fore part for support a counter bearing.

Hawighorst teaches the crosspiece 44 on the second fore part for support the counter bearing 26.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the crosspiece on Merkel’s second fore part for support the counter bearing as taught or suggested by Hawighorst. The modification of Merkel’s crankshaft by forming the cross piece as taught by Hawighorst would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than “the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement.” KSR Int’l. Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007) and it “does no more than yield predictable results.” KSR at 1739.

Claim 4

Hawighorst’s crosspiece 44 forms a base of a sleeve 46 extending away from the first fore part 42 and the second fore part (at 44 in FIG. 3) in the axial direction.

Claims 5 and 15

Merkel's structural part 44 is connected to the shaft 14 at least in a rotationally secured manner.

Claims 6 and 16

Merkel's structural part 44 has a cylindrical outer wall (at the bore hole in App.).

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Zimmer (FIGS. 1-15) and Carroll (FIG. 1).
10. Applicant's arguments filed October 11, 2010 have been fully considered but they are not persuasive.

DRAWINGS

The replacement drawings are not accepted for the reasons set forth above.

ART REJECTION

Applicant contends, inter alia, that Merkel's layer 44 could not be inserted into the bore hole with its structure shown in FIG. 1 and the problem solved by the present invention is not relevant for the windshield wiper of Merkel since, according to Merkel, the crank is not and cannot be pressed onto the layer 44. (Amend. p. 7)

It is noted that the features upon which applicant relies (i.e., the layer 44 could not be inserted into the bore hole and the crank is not pressed onto the layer) are not positively recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In fact, claim 1 broadly calls for the first forepart of the structural part projects into the bore hole. As noted, FIG. 1 of Merkel shows that the first

forepart projects into the borehole, thus, it meets the claim. In addition, claim 1 does not positively require the crank being pressed onto the structural part. See the rejection under 35 USC 112, ¶ 2nd above. Therefore, even if Merkel's crank is not pressed onto the layer, it still meets the broad language "can be pressed" in claim 1.

On the other hand, Merkel's crank 12 is capable of being pressed onto the layer 44 by, e.g., force fitting or sliding the crank 12 along the shaft 14 so that the crank 12 can pass the first forepart and slide onto the middle part between the first and second foreparts as seen in FIG. 1. Even if the problem solved by the present invention is not relevant for the windshield wiper of Merkel, however, the reason to combine prior art references does not have to be identical to that of the applicant in order to establish obviousness. KSR, 127 S. Ct. at 1743, 82 USPQ2d at 1398; In re Kemps, 97 F.3d 1427, 1430, 40 USPQ2d 1309, 1311 (Fed. Cir. 1996).

In the same vein of arguments, Applicant asserts that Hawighorst does not provide a connection between the crank and the shaft nor does it prohibit the shaft from being axially stressed while the crank is pushed onto the shaft. (Amend. p. 7)

The Examiner respectfully submits that FIGS. 2 and 3 of Hawighorst show the connection between the crank 24 and the shaft 22 and its English abstract describes "a drive unit (16) with a drive shaft (22), fixed to a crank (24), whereby the connection of crank (24) to driveshaft (22) is a material joint . . ." In addition, claim 1 does not positively require the crank being pushed onto the shaft, thus, the above argument is unpersuasive as pointed out above.

In summary, claim 1 is obvious over Merkel in view of Hawighorst because the combination of Merkel and Hawighorst teaches each and every positively claimed limitation in the claim. KSR *supra*. Hindsight is eliminated in this case because Merkel and Hawighorst are

not only in the same field of endeavor but also solve the same problem (i.e., providing support on the counter bearing) by substantially the same way (i.e., using the cross piece).

In view of the foregoing, the art rejection is respectfully maintained.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/
Primary Examiner, Art Unit 3656